

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO: 2014 CA 002034 (AA)

CHARISSE Y. MATTHEWS and
WAYNE A. DIXSON, individually
and as Parents and Natural Guardians
of MATTHEW DIXSON, a minor,

Plaintiffs,

vs.

DUDLEY G. BROWN, JR., M.D.;
TENET FLORIDA PHYSICIANS SERVICES,
LLC; BERTO LOPEZ, M.D.; BERTO
LOPEZ, M.D., P.A.; and TENET
GOOD SAMARITAN, INC. d/b/a GOOD
SAMARITAN MEDICAL CENTER,

Defendants.

NOTICE OF FILING.

Plaintiffs, CHARISSE Y. MATTHEWS and WAYNE A. DIXSON, individually and as
Parents and Natural Guardians of MATTHEW DIXSON, a minor, by and through the
undersigned counsel, hereby give Notice of Filing the transcript of the October 16, 2015 hearing
before the Honorable Richard L. Oftedal, into the above styled court file.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice has been furnished by electronic mail via the Florida Courts e-filing Portal to all counsel on the attached service list this 6th day of November, 2015.

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 2014 CA 002034(AA)

CHARISSE Y. MATTHEWS and WAYNE A. DIXSON,
individually and as Parents and Natural
Guardians of MATTHEW DIXSON, a minor,

Plaintiffs,

vs.

DUDLEY G. BROWN, JR., M.D.;
et al.,

Defendants.

HEARING HELD BEFORE THE HONORABLE RICHARD L. OFTEDAL

TAKEN ON BEHALF OF THE PLAINTIFFS

OCTOBER 16, 2015

10:29 A.M. TO 11:52 A.M.

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401

REPORTED BY:
MELISSA KALLAS
NOTARY PUBLIC, STATE OF FLORIDA



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1 (WHEREUPON, the following proceedings were
2 had.)

3 THE COURT: Good morning, everybody. Please
4 be seated.

5 Let's begin. Let me have everybody make their
6 appearance for the record, please.

7 MS. KREIZINGER: Loreen Kreizinger and Ryan
8 Mosher on behalf of the Plaintiffs.

9 MR. COMRAS: Manny Comras on behalf Dr. Dudley
10 Brown and Tenet Florida Physician Services.

11 MR. LEA: Gordon Lea on behalf of Berto Lopez,
12 MD and Berto Lopez, MD PA.

13 MR. WEBBER: John Webber on behalf of Good
14 Samaritan.

15 MS. KRUSBE: Donna Krusbe on behalf of Dr.
16 Brown and Tenet Physician Services.

17 THE COURT: We have a full house. Let's get
18 started. The first issue, should we address the
19 Motion In Limine first?

20 MR. COMRAS: Yes, Judge, I know there's other
21 issues we want to discuss as part of the case
22 management conference part of it, but we would like
23 to proceed first with the Motions In Limine.

24 THE COURT: Okay, I read the motion, and some
25 of the case law, so I'm pretty much up to speed.



1 MS. KREIZINGER: Your Honor, there have been
2 more Motions In Limine that have been filed.

3 THE COURT: This is a real problem, when I
4 have a specially set case, and you all start filing
5 motions on the eve of trial, I don't have time to
6 hear them all.

7 MS. KREIZINGER: We got the last one in from
8 Opposing Counsel at 6 o'clock last night, and I
9 heard about it 10 o'clock last night. I think we
10 are all ready to argue those.

11 THE COURT: I'm not sure I have all of the
12 time to hear them. It is not the way it seems to
13 be it should go. It has been rolled over once or
14 more, and now, all of these motions on the eve of
15 trial, it is unacceptable, really. I agreed to set
16 time aside today to hear these, now I find out
17 there are more. I'm not sure if I'm going to get
18 to them.

19 MS. KREIZINGER: We have agreed to number of
20 them, your Honor.

21 THE COURT: I have no problem with the things
22 that you agree on. Let's see what we can get done
23 today. I know we have this one.

24 Begin.

25 MR. COMRAS: Okay, Judge.



1 We filed four different Motions In Limine. The
2 first one that I have, I don't know if you have it
3 in front of you, is our Motion In Limine to
4 prohibit treating physician John Grossman, MD, from
5 giving causation and standard-of-care opinions
6 and/or bolstering his opinions with reference to
7 medical literature.

8 THE COURT: I have read that.

9 MR. COMRAS: I can represent to the Court that
10 during his deposition, Dr. Grossman advised us that
11 he didn't intend to give standard-of-care opinions
12 in this case. I assume Plaintiffs' Counsel is not
13 planning on eliciting those types of things from
14 him. What concerns me, is the way he testifies,
15 seems to impart some liability on behalf of Dr.
16 Brown. Here we have a peripheral hand surgeon who
17 saw the Plaintiff, the young Plaintiff, many months
18 after the incident that occurred at Good Samaritan
19 Medical Center, and he's retrospectively looking
20 back without the benefit of any medical records,
21 other than his own medical records without the
22 benefit of any depositions whatsoever, and saying
23 that "I believe this injury was caused as a result
24 of the vaginal delivery of this baby." I think it
25 is inappropriate. I don't think there's a basis



1 for it or a foundation for it. Even though he's
2 unwilling to admit that is his sole basis for
3 coming to his opinion that there's an injury, and
4 therefore there must have been something that
5 happened during the vaginal delivery, something
6 that was perhaps negligent. I think he kind of
7 does in fact say that.

8 THE COURT: Where does he, in fact, does say
9 that?

10 Point to me the specific language.

11 MR. COMRAS: Sure, Judge.

12 If you look at the deposition, throughout the
13 deposition, there's different parts of it, he talks
14 about how extensive the injury was, he talks about
15 the type of damage that was done to the nerve, the
16 type of damage that was done to the muscle, that
17 there was scarring, that there was a neuroma, all
18 of these different things. Then, when he's asked,
19 he keeps relating it back to, "Well, this is all
20 part of the vaginal delivery. He says it multiple
21 times throughout the deposition when he is asked
22 that "this is all part of the vaginal delivery."
23 My position is, Judge, he doesn't have any basis,
24 in fact, to make that opinion. He's relying solely
25 on the fact that he has this injury in order to try



1 and relate it back to something that happened
2 during the vaginal delivery.

3 THE COURT: Is this a res ipsa argument, that
4 there's no way this child could have been injured
5 except through the delivery?

6 MR. COMRAS: The problem with res ipsa, Judge,
7 if he saw this patient within minutes of the
8 vaginal delivery and had that opinion, that could
9 be understandable, but there were many months
10 between delivery and the child being seen by the
11 Doctor. There's many opportunities for this child
12 to have been reinjured, or injured himself or
13 injured by someone else during that period of time,
14 so while there may have been some initial injury,
15 to try to relate back the entire injury to this
16 vaginal delivery without the benefit of any
17 deposition or medical records, we think it is
18 inappropriate, improper, and also a comment on the
19 standard of care as it pertains to Dr. Brown.

20 THE COURT: He's not offering any standard-of-
21 care opinion as such per se?

22 MR. COMRAS: He's not saying "I believe
23 someone deviated from the standard of care."

24 THE COURT: He is not saying someone was
25 negligent, either, right?



1 MR. COMRAS: Well, that is where it is a
2 little difficult. He's essentially saying, Judge,
3 that there was excessive lateral traction that
4 caused this injury. That plays into Plaintiffs'
5 theory which is that they believe Dr. Brown used
6 excessive force in delivering this baby, and that
7 is a criticism of their expert and that is a
8 criticism that they are alleging against our
9 Doctor. In a sense, they are back-dooring this
10 criticism, "Wait a minute, we are not really saying
11 it is a criticism," but as it a backdoor criticism
12 of Dr. Brown.

13 THE COURT: Thank you.

14 Response?

15 MS. KREIZINGER: Yes, your Honor. Let me
16 explain who Dr. Grossman is, he is one of three
17 surgeons in the country that treat children with a
18 brachial plexus injury. What happened in this
19 case, we had an 11-pound-11-ounce baby. He should
20 have C-section'd it, and as a result, the child was
21 delivered and there was extensive lateral traction
22 placed on this child's head. Dr. Brown broke the
23 resume humerus in half on the right and on the
24 left, ripped the C5 and C6 nerves that come off of
25 the spine. Dr. Grossman is one of three surgeons



1 that performs surgery on these children, and he
2 testified under oath that based on the MRIs, based
3 on the interoperative findings, this is a traction
4 injury, this is not something that happened any
5 other way. He said this is a traction injury, he
6 saw it himself, he tried to repair it, and bring
7 the nerves back together, he found scar tissue, and
8 based on his training, education, he testified to
9 causation numerous times. He's never been
10 disqualified as an expert. He's our surgeon who
11 absolutely can testify to causation. This was only
12 caused by a traction injury by putting so much
13 pressure on the head, and forcing the head down.

14 THE COURT: Is he going to go beyond what he
15 testified to in his deposition?

16 MS. KREIZINGER: No, he is not. He said
17 specifically this is a traction injury, it occurred
18 at the time of the delivery. He said I'm not
19 rendering a standard-of-care opinion. It happened,
20 it is a traction injury. He's the one person with
21 his own eyes and objective findings saw the injury
22 and he has the training and experience to testify
23 to this. He's the surgeon in the case.

24 THE COURT: Are you going to attempt to
25 bolster his testimony with any medical literature.



1 MS. KREIZINGER: No, your Honor, absolutely
2 not. We agreed in a Motion In Limine that no
3 bolstering is going to happen with articles.

4 THE COURT: I'm going to deny the Motion In
5 Limine.

6 MR. COMRAS: If I can add just one or two more
7 things?

8 THE COURT: Okay.

9 MR. COMRAS: Judge, I'm not disputing this is
10 a traction injury. There's a difference between
11 saying it is a traction injury and this is a
12 traction injury that occurred at the time of
13 delivery. On top of that, there's other evidence
14 and discussion by the experts that this type of
15 injury can in fact happen by way of a C-section,
16 can happen inter-utero, doesn't necessarily happen
17 from a vaginal delivery. But to have this doctor
18 come in and say he knows this is because the head
19 was pulled in a certain direction or the head was
20 pulled too hard, it is inappropriate, he hasn't
21 reviewed any depositions or medical records. If
22 you want to say this is a traction injury, fine.
23 We are not opposing that, but I don't think he can
24 go and say this is a traction injury that is as a
25 result of vaginal delivery.



1 THE COURT: Obviously, you disagree on that.
2 I'm going to deny the motion, providing, again, he
3 doesn't go beyond what he stated in his deposition,
4 as far as testimony regarding standard of care or
5 negligence.

6 Next issue?

7 MR. COMRAS: Our next issue is the Motion In
8 Limine regarding Nurse Lagana from directly or
9 indirectly criticizing the care and treatment
10 provided by Dr. Brown.

11 THE COURT: That one I have not seen.

12 Does somebody have a copy of that motion? When
13 was that filed?

14 MR. COMRAS: If I can approach, Judge?

15 (Hanging.)

16 THE COURT: When was this filed?

17 MR. COMRAS: I'll take a look at the back.

18 THE COURT: September 18th.

19 MR. COMRAS: September 18th, correct.

20 THE COURT: When did she give her deposition?

21 MR. COMRAS: She actually finished her
22 deposition yesterday afternoon. So we had one part
23 of her deposition taken. We filed this in the
24 interim and the final part of her deposition was
25 finished and concluded yesterday.



1 THE COURT: When did you dot first part of the
2 deposition?

3 MR. WEBBER: July.

4 THE COURT: My question, again, apparently,
5 whatever gave rise to this motion occurred in July,
6 and here I am asked to address it the week before
7 trial. Again, I don't know why it was not set
8 earlier to have this heard, but here we are, let's
9 go forward.

10 MR. COMRAS: Judge, this is our motion to
11 prohibit the nursing expert from directly or
12 indirectly criticizing the care given by Dr. Brown.
13 Nurse Lagana is just that, a nurse. Dr. Brown, who
14 I represent, is a physician, an OB/GYN, and
15 although she has come out multiple times in her
16 deposition and said she's not qualified to give
17 standard-of-care opinions as to OB/GYN care, and
18 she's not qualified to render standard-of-care
19 opinions against Dr. Brown, she still throughout
20 her deposition and throughout her deposition
21 yesterday, continued to make comments that were
22 deviations from the standard of care that relate
23 directly back to Dr. Brown.

24 THE COURT: Like what?

25 MR. COMRAS: For instance, Judge, she



1 indicated, whether or not an episiotomy was
2 something that was appropriate or not appropriate.
3 She says there's a bunch of things in the
4 literature that indicate it is no longer really
5 appropriate, however under certain circumstance it
6 is may be appropriate. An episiotomy is a decision
7 made by Dr. Brown, he went forward with it, there's
8 no reason for her to comment at all whether or not
9 an episiotomy is appropriate. She's made
10 commentary that she believed Dr. Brown used
11 excessive force in the delivery of this baby.
12 Again, she doesn't deliver babies. She's a nurse.
13 She admits she's not qualified to give standard-of-
14 care opinions against Dr. Brown, and she continues
15 to make these allegations. When you pressure her,
16 she says "I'm not saying they are deviations from
17 the standard of care, I can't comment on that."
18 She still comments on it and makes it part of the
19 commentary when asked questions about the nurses.

20 THE COURT: She's asked questions about the
21 nurses?

22 MR. COMRAS: She's asked questions about the
23 nurses, she starts making gratuitous commentary
24 regarding Dr. Brown. She also has other opinions
25 that she says relates to the nurses, but actually



1 relate to Dr. Brown. For example, she said Pitocin
2 should not be given to this mother. Well, the
3 decision to give Pitocin was made by Dr. Brown. So
4 here we have a nurse criticizing Dr. Brown for
5 deciding to give Pitocin. Again, it is
6 inappropriate. Of course, she's trying to shadow
7 it, saying, "I'm critical of the nurses giving it
8 to the patient," but she's really saying "I'm
9 critical of the nurses for following Dr. Brown in
10 deciding to give Pitocin." She also made
11 commentary that Dr. Brown should have come in
12 earlier than he did. She also said she doesn't
13 believe there was an appropriate informed consent
14 obtained. All of these things are physician
15 issues, whether it is Dr. Brown, Dr. Lopez or
16 another physician, they are not nursing issues.
17 She should not be allowed to give any opinions that
18 relate whatsoever or negatively impact Dr. Brown or
19 Dr. Lopez.

20 THE COURT: Thank you.

21 Response?

22 MS. KREIZINGER: Yes, your Honor. Dr. Lagana,
23 she is a nurse PhD. She finished her testimony
24 yesterday, and she said numerous times "I'm not
25 going to testify as to the standard of care of Dr.



1 Brown." What she's testifying to as it relates to
2 informed consent is she said "the nurses had a duty
3 and responsibility to document on the chart that
4 there was a discussion between Dr. Brown and the
5 patient before giving this dangerous drug Pitocin."
6 That is what she said. She's critical of the
7 nurses. She also said the nurses shouldn't have
8 started the Pitocin without an estimated fetal
9 weight on the chart. This child was over 11
10 pounds, and it is her position in the standard of
11 care of nursing only, that a nurse never starts
12 Pitocin without an estimated fetal weight on the
13 chart, because if the child is so big, they are
14 going to have head compressions, and the head will
15 be bruised just like what happened in this case.
16 Her criticism is only against the nurses.

17 THE COURT: The argument is as you know, is
18 something of a backdoor attack on the doctors by
19 saying that the nurses shouldn't have administered
20 Pitocin when the decision whether to administer
21 Pitocin is a doctor's decision, in fact, it is a
22 criticism of the doctor.

23 MS. KREIZINGER: Because there's supposed to
24 be a policy and procedure to the fact that a nurse
25 is not to give Pitocin without an estimated fetal



1 weight on the chart, that is the standard of care.

2 THE COURT: Irrespective of what the doctor
3 says?

4 MS. KREIZINGER: Absolutely. You have to go
5 through the chain of command. You as the nurse, if
6 a doctor says to go and give a certain medication
7 and you are fearful there will be a problem with
8 the patient, you as the nurse have to go through
9 the chain of command. She's not saying he's wrong
10 in giving it, she said that the nurse is not to
11 give that without an estimated fetal weight on the
12 chart. That is her criticism. She never said he
13 couldn't give Pitocin. Her focus is solely on the
14 nurses, and that is what she kept saying yesterday.
15 I'm not testifying against Dr. Brown, I'm telling
16 you the standard for nurses.

17 THE COURT: What about the episiotomy?

18 MS. KREIZINGER: Regarding the episiotomy, she
19 didn't say the patient didn't need an episiotomy.
20 What she said is the nurses had a responsibility to
21 make sure he gave some type of anesthetic before he
22 cut an episiotomy and he gave no anesthetic. The
23 nurses have to be an advocate for that patient.
24 She never said he couldn't do an episiotomy, she
25 only said the nurses should say, "Hey, Doctor, she



1 has no anesthesia. You want me to get anesthesia
2 here? You are going to cut her." That is it. She
3 never testified she doesn't need an episiotomy, it
4 is just the nurse goes with that particular
5 procedure, that is it. She's not crossing the
6 line, and she won't cross the line at the time of
7 trial. She made that very clear yesterday.

8 THE COURT: What about the issue of excessive
9 force?

10 MS. KREIZINGER: She never said in her
11 deposition, if Mr. Comras can point it out, she
12 never said "excessive force" anywhere. It is not
13 documented anywhere. She never testified to it.
14 Excessive force is what was done by Dr. Brown, and
15 she didn't have opinions as it relates to Dr.
16 Brown. That is absolutely false. It is not in her
17 deposition.

18 MR. COMRAS: Her deposition was concluded
19 yesterday, we don't have a transcript. She did
20 mention the fact that she believes there was
21 excessive force. If she is saying she's not going
22 to include that all and not make commentary, we
23 agree on that Motion In Limine, if it is precluded.
24 Again, Judge, these are all back-door criticisms
25 against our Doctor.



1 THE COURT: Isn't it possible, there will be
2 some overlap? I mean, it might be that you can't
3 argue against what the nurses did without somewhat
4 indicating the doctors without bringing in the
5 nurses?

6 MR. COMRAS: For the first time, this is the
7 difference, in the last two years we had the case,
8 we heard a new criticism, which is they should have
9 initiated a chain of command. It was never
10 discussed in Nurse Lagana's deposition, or
11 discussed in the complaint or anywhere else. Now,
12 we are hearing they should have initiated a chain
13 of command.

14 THE COURT: That is a different argument,
15 whether or not she should be able to give these
16 opinions in the first place though, right?

17 MR. COMRAS: That is correct, Judge. In a
18 sense, Judge, I was not prepared to talk about
19 chain of command, because it was not an issue up
20 until just now. Again, Judge, it is one thing to
21 say that the nurses should have initiated a chain
22 of command, I can understand that. It is another
23 thing to say, "You nurse, were negligent, because
24 you didn't make sure Dr. Brown didn't come in here
25 sooner, because he should have been here sooner."



1 The implication is that he needed to be here
2 sooner.

3 THE COURT: Is that going to be your
4 testimony?

5 MS. KREIZINGER: Well, your Honor, what is
6 going to happen is, and Dr. Lagana testified
7 yesterday on this chain of command, my client
8 showed up at 5:30 in the morning at Good Samaritan.
9 This baby was delivered around 1:20. He showed up
10 11 minutes before the delivery, had no idea of what
11 he was going to be dealing with.

12 THE COURT: Is this witness going to be
13 offering an opinion to the doctor in that regard,
14 being late?

15 MS. KREIZINGER: No, the nurse is going to say
16 the nurses had a responsibility to make sure they
17 communicated to Dr. Brown there was no fetal weight
18 on the chart, and if there was no fetal weight on
19 the chart and he didn't come in, they needed to go
20 through the chain of command. That is what she
21 said yesterday. This is not something new I'm
22 springing on the Court today. She testified about
23 it yesterday. That is what happens, that is the
24 standard of care. "If you are going to give
25 Pitocin, you got to have an estimated fetal weight.



1 There wasn't one in the chart. They gave it. Now,
2 we have a problem with the child." She's not going
3 to testify against Dr. Brown. There's an overlap,
4 of course, in regards to certain things, but she's
5 only talking about the standard of care for nurses.

6 THE COURT: The judicial argument, I was, to
7 some extent sympathetic with the position taken by
8 the Defense in this case, that is, I don't think
9 that I don't think that a nurse should comment or
10 give opinions regarding the doctor's standard of
11 care or any negligence related thereto. But
12 hearing in more detail of what the actual testimony
13 is regarding the Pitocin, the issue of informed
14 consent, seems to me that is not exactly what is
15 happening. I don't know if that can be structured
16 so there can't be some spillover.

17 I'm going to deny the motion. Again,
18 obviously at trial, I want to hear what she says at
19 trial, if in fact there's a crossing of the line,
20 I'm happy to step in.

21 MR. COMRAS: Judge, I understand your ruling,
22 we do have at least an agreement or maybe perhaps
23 the motion is granted in part insofar as she's not
24 allowed to testify that an episiotomy was
25 inappropriate, that Dr. Brown used excessive force



1 in the delivery of this baby?

2 THE COURT: I think that is right. I mean,
3 based upon the proffer you gave me, she's not going
4 to testify to that Dr. Brown deviated from the
5 standard of care because he ordered Pitocin, right?

6 MS. KREIZINGER: Your Honor, she's not going
7 to testify, I'll stipulate, that Dr. Brown used
8 excessive force, or he fell below the standard of
9 care because of the episiotomy. She has no opinion
10 on that, only that the nurses need to be an
11 advocate; "if you are going to do an episiotomy,
12 give the patient something for the pain," that is
13 all.

14 THE COURT: If that is the extent of the
15 testimony, I'll deny the Motion in Limine. If it
16 goes beyond that, by all means, I'll be happy to
17 rule.

18 What else do we have?

19 MR. COMRAS: The last, Judge, is a Motion In
20 Limine, I'm arguing, that I'm arguing, the Motion
21 In Limine regarding criticisms of Dr. Brown's
22 general knowledge of obstetrics and brachial plexus
23 injuries. What I'm really focusing on here, Judge,
24 is that Plaintiffs' expert had a criticism of Dr.
25 Brown. Dr. Brown is a board-certified OB/GYN,



1 delivered hundreds if not thousands of babies in
2 the past, and their expert, Dr. Botley Gary,
3 actually came out and made an allegation that he
4 thought my Doctor just wasn't that bright, wasn't
5 that smart, didn't know the general basics of
6 OB/GYN care. I think that is inappropriate.

7 THE COURT: Do you have the actual passage of
8 the actual statement that he made?

9 MR. COMRAS: I don't think I brought the
10 deposition with me. I can tell your Honor, that
11 that was one of the criticisms which was that Dr.
12 Brown had some lack of overall OB/GYN knowledge,
13 and I think that is an inappropriate comment. I
14 think Dr. Brown himself is an expert. You will see
15 the Plaintiffs' attorney also filed a Motion In
16 Limine to preclude one expert from testifying and
17 criticizing another expert, and technically, Dr.
18 Brown is not only a Defendant, but he's also an
19 expert, he's a board-certified OB/GYN, and I just
20 think it is inappropriate for anyone to come in and
21 challenge Dr. Brown's general knowledge of OB/GYN
22 care.

23 THE COURT: It would be easier if I knew
24 exactly what the testimony is.

25 MS. KREIZINGER: Your Honor, I don't have it,



1 but we are talking about is I'm absolutely allowed
2 to go into what this Doctor knows as it relates to
3 obstetrics. This physician is a board-certified
4 obstetrician. He doesn't know how the injury
5 happened. It is an obstetrical injury, brachial
6 plexus, that happened in an obstetrical patient by
7 the hands of an obstetrician and in an obstetrical
8 ward.

9 I went in and asked him, basically, "Do you
10 understand how a brachial plexus injury happens at
11 the time of delivery?"

12 He absolutely had no knowledge.

13 I asked him, "Do you know the stages of
14 labor?", which the nurses even know, "I don't know
15 them." "Do you know the difference between a
16 stretch injury and a permanent injury, a transient
17 injury, axial traction which doctors used at the
18 time that they used a suction?"

19 He didn't know the basics. My expert
20 absolutely has the right to say under oath that he
21 has concerns that Dr. Brown doesn't understand the
22 basics as to obstetrics, because he absolutely
23 doesn't. I asked him simple, simple medical terms,
24 he didn't know them, Judge. That is why we are
25 here today with a horrific injury. As it relates



1 to his knowledge, what he knows, it is all
2 regarding obstetrics. I didn't ask him something
3 that a neurosurgeon would know. I asked him only
4 questions that an obstetrical doctor would know,
5 that are in the obstetrical books that are a part
6 of the American College of Gynecologists which he
7 is a member of, and he's board-certified. Because
8 he didn't know those things, yes it goes to his
9 credibility, goes to his knowledge, and I'm allowed
10 to ask the questions and my expert can comment as
11 it relates to a Defendant in a case regarding
12 whether or not he feels the doctor understands the
13 basics of obstetrics, especially as it relates to
14 this injury.

15 THE COURT: How does that play out? How does
16 the question and answer go with your expert?

17 MS. KREIZINGER: I don't know. I don't have
18 his testimony. I'm not sure what Mr. Comras is
19 referring to.

20 THE COURT: I need more detail. The question
21 is obviously asked, and once the question is asked
22 and what the response is, and I don't know if the
23 question is going to be "Should a doctor in this
24 position have the necessary knowledge regarding X,
25 Y and Z?



1 And the answer is: "Yes, anybody delivering a
2 baby should know X, Y and Z. If you don't know
3 that, you shouldn't be in the operating room."

4 Or is it going to be, in general terms, "Was
5 he an idiot? Was he stupid?"

6 I don't know what it is going to be.

7 MR. COMRAS: I'm not saying that Ms.
8 Kreizinger can't ask certain questions that relate
9 to OB/GYN care. I don't believe what Ms.
10 Kreizinger relayed to your Honor was accurate. She
11 asked a lot of questions that were outside the
12 scope.

13 THE COURT: It is hard for me to rule in a
14 vacuum.

15 MR. COMRAS: I understand, Judge. More so
16 than that, Judge, I think it is completely
17 inappropriate. Like I said, Ms. Kreizinger has a
18 motion she filed that has all of the case law she's
19 relying on, that indicates you are not supposed to
20 use one expert to criticize the opinions of another
21 expert.

22 THE COURT: I think we all understand that.

23 MR. COMRAS: That is my point.

24 THE COURT: I'll reserve ruling on this
25 motion. Again, I don't know, if you are concerned



1 if we have to proffer that testimony and send the
2 Jury out for a few minutes while we hear it, maybe
3 we can do that, I'm not comfortable ruling on it
4 now in this vacuum.

5 MR. COMRAS: Thank you, Judge.

6 MS. KREIZINGER: Okay.

7 THE COURT: What else do we have?

8 MS. KRUSBE: Good morning, your Honor.

9 This is Dr. Brown's position Motion In Limine
10 to preclude any evidence that there was a Social
11 Security determination of disability with regard to
12 the child. We filed -- this was filed. Do you
13 have a copy of the motion?

14 THE COURT: If I do, I apologize, I didn't
15 read it. I didn't see it on there.

16 MS. KREIZINGER: We filed a response, too, and
17 so, I can provide the Court with the response that
18 we filed. (Hanging.)

19 MR. COMRAS: If I can approach, Judge, I can
20 give you a copy?

21 THE COURT: Okay.

22 MR. COMRAS: (Hanging.)

23 MS. KREIZINGER: This is the motion in
24 opposition, with the case law (Hanging.)

25 THE COURT: Okay. Thank you.



1 Since I have not read this, I will have to do
2 it on the fly.

3 MS. KRUSBE: It is a very simple motion, your
4 Honor. It is three pages. Basically, our evidence
5 of determination of disability by the Social
6 Security Administration is inadmissible for three
7 reasons. First of all, when the Social Security
8 Administration determines disability, they are
9 applying different standards than what are applied
10 in a med-mal case, and they a different goal. They
11 are more lenient in leaning towards providing
12 benefits to the disabled person.

13 And finally, that is a proceeding in which the
14 Defendant in a med-mal case did not get to
15 participate. So, and as far as any basic
16 evidence --

17 THE COURT: Has this issue ever come up
18 before?

19 MS. KRUSBE: You mean ever or in this case?

20 THE COURT: Is there case law?

21 MS. KRUSBE: Well, I cited case law, I cited
22 the Bob Wilson versus Mohammed case that talks
23 about the letter, says the Social Security award
24 letter is inadmissible hearsay. I cite -- I found
25 a New Jersey case that -- I understand that New



1 Jersey doesn't control in Florida, but it has a
2 really good analysis of why evidence of Social
3 Security disability does not apply. This is the
4 Villanuevo versus Zimmerman case. I can provide
5 your Honor a copy. (Hanging.)

6 THE COURT: Is there a particular nuance or
7 New Jersey law that would make the holding in that
8 case opposite to Florida?

9 MS. KRUSBE: I quoted a pretty long quote in
10 my motion that lays out the rational. It says, "In
11 Social Security Disability hearings, the ALJ has an
12 affirmative obligation to assist the Claimant in
13 developing the facts." Clearly the Judge in a med-
14 mal case, does not have that. "In evaluating
15 whether substantial evidence supports the ALJ's
16 findings, lenience should be shown in establishing
17 the Claimant's disability." Clearly, a different
18 standard. "The special nature for proceeding for
19 disability benefits undermines the probative value
20 of a Social Security Administration determination
21 of disability in an adversarial trial, where the
22 plaintiff bears the burden of proof."

23 So for them to come in and say to the Jury,
24 "This child has already been declared disabled."
25 It kind of states the ultimate fact that we are



1 here to try in the case, and the Jury is to decide
2 as the trier of fact.

3 THE COURT: Your objection is not on hearsay,
4 correct?

5 MS. KRUSBE: Your Honor, it would be, to this
6 date, as far as I know, they have not come in with
7 any substantive evidence or letters, anything like
8 that, as far as from the Social Security
9 Administration, so certainly, we would object if
10 they were to attempt to admit some letter like
11 that, but we don't want any argument or testimony
12 or anything eluding to the fact that the Social
13 Security Administration has already determined this
14 child to be disabled.

15 And Mr. Comras just advised me that we have an
16 IME report that indicates the child is not
17 disabled. I can say that kind of flows into the
18 Plaintiffs' response to our motion which was filed
19 last night. I will cite a case, the Turner case, I
20 really think it is entirely inapplicable, cite the
21 case for the proposition that the Court should use
22 the Disability standard definition of "disability"
23 as set out in the Social Security statutes.

24 First of all, in the Turner case, the Court
25 says, "The Florida legislature has not defined



1 "permanent disability. It appears no Florida
2 appellate court has construed "Permanent Total
3 Disability" as it applies to a child's loss of
4 parental consortium or a parent's loss of filial
5 consortium."

6 Right there, the Court says it has never been
7 decided. Then it goes on to say that "It is
8 anticipated when the Florida appellate courts
9 address the issue, they will define "Permanent
10 Total Disability" as the phrase already defined by
11 the Florida Workers' Compensation Law and Social
12 Security Act." The citation they give for that is
13 a Florida Bar Journal article, and they are
14 basically citing this Florida Bar Journal article
15 and I guess adopting whatever the author of that
16 article believes will happen. It has never
17 happened. We don't have any law saying that is the
18 definition for "Permanent Total Disability." Even
19 if it were, I think the argument would be, maybe
20 you could use that definition, if you want to have
21 the Jury determine if this child was disabled, but
22 they still need to be the trier of fact and
23 determine whether, you can't just come in and state
24 the ultimate fact. That is our argument. We don't
25 want argument or testimony or evidence to this Jury



1 saying the child is disabled and the Social
2 Security Administration, the Government, has
3 already determined that to be so.

4 THE COURT: Thank you.

5 MR. MOSHER: Good morning, your Honor.

6 Just as a quick aside, this is the parents'
7 only opportunity to come up here and come before
8 the court and this is their time they are asking
9 for pain and suffering for their filial consortium.
10 In order to do that under Florida law, you have to
11 show the child has a permanent disability.
12 Obviously, in this instance we have a determination
13 by the Social Security Administration, a Federal
14 agency, that the child is permanently disabled.

15 THE COURT: How are you going to get that in?

16 MR. MOSHER: Well, your Honor, what about
17 direct testimony? This is a fact that happened.
18 We will put the Mom on the stand, "Does your child
19 receive Social Security Disability benefits?" "Yes,
20 he does." "Why does he receive those benefits?"

21 A. "Oh, well he was determined permanently
22 disabled."

23 THE COURT: "Objection, hearsay."

24 MR. MOSHER: Right, it is not hearsay, your
25 Honor, it is a fact, it is a determination that has



1 been made.

2 THE COURT: I don't know. It sounds like
3 hearsay 101 to me.

4 MR. MOSHER: Well, your Honor, it is the same
5 as, "Is your son in a wheelchair?" "Yes, he is."
6 "Why is that?" "He broke his leg." "Who told you
7 that?" "The doctor did."

8 THE COURT: I'm not sure about a broken leg,
9 what it involves is medical testimony or argument
10 that very well may be hearsay at the time. It is
11 an out-of-court statement, it is what somebody
12 said, somebody in the Social Security
13 Administration or people within the Social Security
14 Administration said. It is an opinion that they
15 derived, so it is an out-of-court statement,
16 admitted for the truth of the matter, being the
17 child has been disabled, nobody is obviously
18 testifying from the Social Security Administration
19 in court, not that I'm aware of. How are you going
20 to get over the hearsay objection?

21 MR. MOSHER: Well, the Florida courts, nobody
22 adopted this and said this is the standard we are
23 going to use, the Social Security Administration,
24 Opposing Counsel is right on that, but this is
25 Middle District Court in Florida applying Florida



1 law, saying this is how we anticipate Florida is
2 going to do it as opposed to adopting a New Jersey
3 standard from a different court, and they are
4 saying we are going to use the Social Security
5 Administration's determination as our definition.

6 THE COURT: It is Federal law, whether it is
7 New Jersey or here. It is the same Social Security
8 Administration, right?

9 MR. MOSHER: Sure, when the Florida courts say
10 "we are going to adopt this determination," that
11 means our definition for Permanent Disability for a
12 child, as a prerequisite to filial consortium, if
13 we say the definition for "Permanent Disability" is
14 the same as the Social Security awards, if you meet
15 it for one, you meet it for the other, that is
16 direct evidence.

17 THE COURT: I'm not persuaded. I'm going to
18 grant the motion. One, I'm not sure you can get it
19 in evidentiary-wise, and see if you can overcome
20 the hearsay hurdle. I have not read it in
21 entirety, the New Jersey opinion, but I read the
22 excerpt that is provided here. I think their
23 reasoning and rational applies here, this being
24 Florida and New Jersey. I'm going to grant that
25 motion.



1 MR. MOSHER: Quickly. They are bringing in
2 the IME. Their report saying he's not disabled, he
3 will not have problems in the future. This is the
4 evidence we have that is in opposition to that.
5 This is our chance to balance the scale.

6 THE COURT: They had an IME doctor, somebody
7 else making an examination, that person is giving
8 their opinion. If you have someone else that will
9 give an opinion coming into court based on an
10 examination, I assume that person could give their
11 opinion, as well, right? You are asking some
12 Federal Government on a document making a
13 determination outside of this proceeding, nothing
14 is admissible, and I don't think it is appropriate.
15 If Florida adopts the standard, maybe we will
16 address it.

17 MR. MOSHER: It is a Federal agency, that is
18 the type of ruling that courts are absolutely
19 allowed to take judicial notice of, given it is a
20 Federal agency, it is the type of thing the Court
21 should take judicial notice of.

22 THE COURT: You are slugging after the bell. I
23 think I made my ruling.

24 Moving on.

25 Next one?



1 MS. KREIZINGER: Your Honor, there are some
2 motions filed by the Hospital, and also by us, that
3 I don't know if you have copies of.

4 THE COURT: I don't, at least I don't think
5 so.

6 MS. KREIZINGER: Do you have any more?

7 MR. COMRAS: We have one causally related to
8 things that are your Motion In Limine, and that is
9 whether the Affordable Care Act is something we can
10 discuss.

11 MS. KREIZINGER: Last night they filed after
12 6:00 a Motion In Limine, I'm absolutely in no
13 position to argue it.

14 MR. COMRAS: It is not a Motion in Limine.

15 MS. KRUSBE: It is titled a "Motion In
16 Limine."

17 THE COURT: How can she argue something she
18 just got notice of? It is a long trial, we can
19 break and argue if you want to do it at that point.

20 MS. KREIZINGER: Your Honor --

21 MR. LEA: If I can go next, I will be short?

22 THE COURT: Okay, with that promise, you can
23 go next.

24 MR. LEA: May I approach?

25 THE COURT: Sure.



1 MR. LEA: I don't know if you have these
2 Motions In Limine. It is Dr. Berto Lopez and his
3 PA. I talked to Plaintiffs' Counsel, we agreed to
4 every single one of them except for two. There are
5 ten Motions In Limine. The one we have not agreed
6 to, is No. 8, that is the first one, we are not in
7 agreement with.

8 Judge, that simply says as a matter of law,
9 Plaintiffs will never have to pay the difference
10 paid by the healthcare providers, in the amount any
11 provider may accept for Medicaid, Medicare or a
12 third-party insured. That is black-letter law.
13 There's some sort of contract that Dr. Grossman, in
14 this case, came up before, has with his patients
15 that says, "No, I require the difference between
16 that." I don't even know if that is legal, but
17 they are going to try to introduce evidence that if
18 we are found liable, that that is a damage that
19 they will have to make up for, because it is over
20 and above what Medicare and Medicaid would pay.

21 THE COURT: Is this a collateral source
22 argument?

23 MR. LEA: I don't think they are allowed to do
24 it, but Counsel has a different opinion.

25 THE COURT: Wasn't there just an opinion that



1 came out yesterday dealing with Medicare and
2 collateral sources, it came out yesterday?

3 MS. KREIZINGER: I didn't read it.

4 THE COURT: I saw the headnote.

5 MS. KRUSBE: I have a copy of that case, your
6 Honor, it ties into our Affordable Care Act
7 argument.

8 MS. KREIZINGER: I don't think that is part of
9 the argument we are having now.

10 THE COURT: Is it germane to this argument?

11 MS. KREIZINGER: I don't think so. We have a
12 situation where this child was on Medicaid. Dr.
13 Brown has a separate contract with the Plaintiff
14 that if they receive any monies, he actually gets,
15 by contract, the outstanding balance that was not
16 paid by Medicaid. He normally charges around
17 \$80,000 for this massive surgery on the spine.
18 Medicaid pays him a small amount. He has a
19 separate contract, it is not a Letter of
20 Protection, and he has no contract with Medicaid or
21 healthcare providers, and he actually by contract
22 asked for the remaining balance of his bill, if in
23 fact the Plaintiff proceeds. It is not a Letter of
24 Protection, it is his own contract. I think we are
25 entitled to put the entire amount of the bill in.



1 We can explain to them, you know, "This was paid
2 this amount and Dr. Grossman has a balance in this
3 amount." It is by contract. It is not a Letter of
4 Protection. It is not outside of the scope of what
5 he cannot do. He has a lawyer that drafts this
6 contract that the client signed. I don't want to
7 go into court and not be able to ask for the full
8 amount to the Jury of whatever that full balance
9 is.

10 THE COURT: There's a danger of double
11 recovery here?

12 MR. LEA: Yes. Your Honor, I don't think he
13 can contract away what the Federal rules say about
14 Medicaid. If he is a provider, he's accepting
15 Medicaid, he can't balance bill. He is coming up
16 with his own contract saying, "I'm entitled to the
17 difference." I don't think he can do that. I
18 don't think he's ever been challenged enough in
19 court, probably, to invalidate that contract. Your
20 Honor, if he's a provider accepting Medicaid and
21 Medicare, he has to abide by the Rules. He can't
22 say, "I don't care, I have my own separate
23 contract." That is not the way it should work.

24 THE COURT: What about that? Otherwise,
25 everybody can contract away like this doctor did.



1 MS. KREIZINGER: He doesn't have a contract,
2 he was asked in his deposition, which was taken
3 back on February 2, 2015, Page 21, he was asked a
4 question:

5 Q. "When you make an agreement with an insurance
6 company, do you not agree to accept what is that the
7 insurance company pays in lieu of seeking additional
8 sums from the patient?"

9 A. "No, I don't."

10 Q. "And in a patient such as Matthew Dixon, who
11 a Medicaid recipient, your belief is that you can
12 collect not only from Medicaid but also charge the full
13 amount of the surgery?"

14 A. "Well, it is a private insurance company. It
15 is United Health Care. They make a business agreement
16 with me on how much they are willing to pay for the
17 surgery, with no stipulation I can't collect from a
18 third-party."

19 Q. "You believe in addition to any sort of copay
20 you are entitled to seek the balance of whatever surgery
21 is after you have been paid by insurance?"

22 A. "Yes."

23 MR. LEA: I believe that is illegal, Judge, he
24 is balance billing, he is not allowed to do that.

25 THE COURT: I'm not saying it is illegal, but



1 somewhat unusual.

2 MS. KREIZINGER: I think it is unusual to all
3 of us, Judge, but he has a contract, he has a
4 lawyer that draws it up, this is what he does. I
5 don't want to miss the opportunity to not ask the
6 Jury for that amount. They can go after him on
7 cross-examination and say, "Hey, you're balance
8 billing," and those things, but that is what he
9 does.

10 MR. LEA: Judge, if I can approach? I was
11 handed the ThyssenKrupp Elevator case, a Fourth
12 District case. (Handing.) I direct your Honor's
13 attention to this last paragraph, which is where it
14 says "Allowing the admission of evidence of the
15 excess discharge by Medicare payment, has the
16 effect of providing an underserved windfall to the
17 Plaintiff," and quotes Stanley 452 So.2d at 515.

18 THE COURT: So your position is your client
19 would be that when the smoke clears at the end of
20 this trial, a good doctor can come after your
21 client for the difference?

22 MS. KREIZINGER: Absolutely Judge. That is
23 why I need an opportunity to ask for it at the time
24 of the trial if we get awarded an amount.

25 MR. LEA: She can use the case law and say you



1 are not entitled to it. It shouldn't have to be
2 presented to a jury that this is the way he bills,
3 and there's a contract, and he's entitled to the
4 difference, if he's really not entitled to the
5 difference.

6 THE COURT: Like I said, does the Federal
7 Government permit that kind of billing?

8 MS. KREIZINGER: You know, Judge, because he
9 has a separate contract and he's not under contract
10 directly with United Health Care, he explained
11 that, "I'm not under contract." We will discuss
12 how much the bill is, they will pay, then I balance
13 bill for the remainder. I think under the Federal
14 Government, you have to have a signed agreement
15 with the healthcare provider that specifically
16 says, "You take what we give you, and that's it.
17 You are entitled to nothing else."

18 THE COURT: That is a quit pro quo: "We are
19 going to pay you, but we are going to pay you under
20 these circumstances."

21 Right?

22 MS. KREIZINGER: Yes.

23 THE COURT: Or reimburse you under these
24 circumstances? Was that a distinction without a
25 difference in your view?



1 MR. LEA: Yes, because it is United Health
2 Care policy, isn't it through Medicare or Medicaid,
3 her policy?

4 MS. KREIZINGER: Yes.

5 MR. LEA: That is a Federal -- they are
6 accepting Federal payments, she's calling it
7 "United Health Care," really it is Medicare. They
8 are accepting Federal payments. They have to abide
9 by the Rules. If you accept payments from a
10 Federal entity, you cannot balance bill. It has
11 never been allowed, whether he has a contract or
12 not.

13 THE COURT: That is my understanding, but I
14 never had this, nobody has.

15 MS. KREIZINGER: It is new for us, too. I
16 don't want to lose the opportunity to ask for those
17 monies, if in fact, we get an award, we will have
18 to pay that balance out of the proceeds. It is a
19 prejudice to the Plaintiff if we don't get an
20 opportunity to ask for it. They can impeach him on
21 it.

22 MR. LEA: Judge, it would be as if your Honor
23 would say, "I know you can't balance bill, but for
24 the purpose of this particular trial, I'm going to
25 allow the Plaintiff to ask for the balance bill



1 damages that Dr. Grossman has under a contract,
2 which is probably illegal."

3 THE COURT: I see the point, though, if in
4 fact the Doctor did sue your client out of the
5 proceeds, then that issue would have to be
6 litigated, I suppose, whether or not, in fact, that
7 was a legal contractor not. I might want to give
8 this a little more thought. My initial reaction,
9 sounds to me that it is contrary to law, but I'm
10 not an expert on that. I'm not fully prepared to
11 say that yet.

12 MS. KREIZINGER: All right.

13 THE COURT: So, let me take another look,
14 think about it some more. I'm sure by the time
15 this issue comes up, if we need to revisit it, we
16 can revisit it again.

17 MR. LEA: In that motion, Judge, I quoted
18 ThyssenKrupp, I quoted Dorato versus Ford Motor
19 Company. All of the other cases you need to make
20 that decision are contained.

21 THE COURT: None of them involved this
22 situation, where somebody had a separate contract
23 with the patient.

24 What is the other one?

25 MR. LEA: 10, your Honor.



1 I gave you a copy of the Florida Statute on
2 physician assistance, which is the blue document
3 below the Motion in Limine.

4 THE COURT: Yes.

5 MR. LEA: If you look down to Subsection 2(f),
6 it talks about supervision of what is expected of
7 the physician on how he should supervise the
8 physician assistant. "Supervision" means
9 "responsible supervision and control except in
10 cases of emergency, supervision requires the easy
11 availability or physical presence of the licensed
12 physician for consultation, direction of the
13 actions of the physician assistant."

14 In this particular case, the physician
15 assistant saw the patient, made the notes on
16 Charisse Matthews for every single one of her
17 visits. There's been testimony from Cecelia
18 Bustamante, who is the physician assistant, that
19 Dr. Lopez was around, easily available. He
20 satisfies the requirements of the statute. He's
21 under easy availability or physical presence.

22 THE COURT: What is being asked?

23 MR. LEA: The Motion In Limine, because of the
24 fact that they have an expert, Dr. Bottiglieri, who
25 said, "No, no, no. You can't do that. If just the



1 physician assistant sees the patient, it is
2 negligence." That is not true. Under the statute,
3 as long as they fulfill the requirements of the
4 statute, Dr. Bottiglieri can't say they are
5 negligent. Under Florida law, a physician
6 assistant is allowed to see a patient all of the
7 time. Dr. Bottiglieri is saying, "No, this
8 physician, Dr. Lopez, needed to come in and see her
9 at least once or twice or whatever, and in fact,
10 she misses an appointment when he was going to see
11 her, one of the last scheduled appointments.

12 THE COURT: Is this different from a nurse
13 practitioner?

14 MS. KREIZINGER: Yes, it is, much different,
15 Judge.

16 MR. LEA: Under the statute, they can't claim
17 that Dr. Lopez should have come in and therefore,
18 he was negligent, if in fact, he was fulfilling the
19 requirements of the statute. His PA was fulfilling
20 the requirements of the statute. There was nothing
21 they did that was not sanctioned by the statute.

22 THE COURT: It is like I'm being asked --

23 MS. KREIZINGER: Your Honor, if I may respond?

24 THE COURT: Yes.

25 MS. KREIZINGER: Charisse Matthews, my client,



1 was a high risk pregnancy. She had gained
2 excessive weight, 50 to 60 pounds. She was
3 borderline gestational diabetic. She was advanced
4 maternal age. She had large babies previously.
5 She is what is considered a high-risk pregnancy. A
6 high-risk pregnancy patient cannot even be seen by
7 a midwife, and a midwife is above a PA, a PA is
8 just being supervised. Our position that Dr.
9 Bottiglieri testified in his deposition that this
10 patient needed to be seen by the OB who never saw
11 her the entire pregnancy, never put his hands on
12 her. The only person that saw her was a PA, a
13 physician assistant, who is way below a midwife. A
14 midwife can't even see a high risk. His criticism
15 in his deposition on page 23, starting on Page 231,
16 line 24:

17 **Q. "So did he," (meaning Dr. Lopez) "fall below**
18 **the accepted standard of care by failing to actually**
19 **treat himself, put his hands on and examine this high**
20 **risk patient?"**

21 **The answer by my OB expert:**

22 **A. "Yes, the patient should not have been**
23 **followed through her entire pregnancy by only a PA. That**
24 **is a violation, of course it is."**

25 **THE COURT: Violation of what?**



1 MS. KREIZINGER: Standard of care. Yes.

2 The statute says, "Hey, you want a physician
3 assistant who is not an RN or LPN, you want a
4 physician assistant, Doc, you have to supervisor
5 that patient.

6 In this case, my expert is saying, "Wait a
7 minute. You have a high risk patient. You never
8 put your hands on the patient. You had a
9 physician's assistant seeing her. That is below
10 the standard of care. She's high risk. You, Doc,
11 should have been seeing her."

12 That is our position, and that is what he
13 testified to, that this was below the standard of
14 care of him never seeing this patient and only
15 allowing a PA only to care for the patient.

16 THE COURT: I grant it. I will deny the
17 Motion In Limine.

18 Anything else for me?

19 MR. LEA: Thank you, Judge.

20 MR. WEBBER: Your Honor, I have a couple, I
21 think, standard Motions In Limine.

22 THE COURT: Boilerplate?

23 MR. WEBBER: Yes, with one exception. The
24 first one is --

25 THE COURT: I don't want to go over the



1 boilerplate ones, unless Counsel feels it is
2 something that you may have to revoke.

3 MS. KREIZINGER: We have a couple of motions,
4 but more specifically, we had filed a motion to
5 strike the Defendant's --

6 MR. WEBBER: Wait, I think he wants to finish
7 up.

8 THE COURT: I think I actually read that
9 motion. Let's finish up on this side of the table.

10 MR. WEBBER: The Motion in Limine regarding
11 bolstering.

12 MS. KREIZINGER: We are in agreement, no
13 bolstering.

14 MR. WEBBER: Can't mention "insurance."

15 MS. KREIZINGER: Absolutely agree.

16 MR. WEBBER: Experts can't talk about
17 "negligence," use the word "negligence."

18 MS. KREIZINGER: I have a problem with that.
19 We have to argue that one. If they can't use the
20 word "negligence," if they are an expert, they
21 can't say the word "negligence," which means falls
22 below the accepted standard of care.

23 MR. WEBBER: I think there's a difference
24 there, your Honor. The determination of negligence
25 falls into the purview of the Jury. They can say



1 something was below the standard of care, doesn't
2 necessarily mean it was negligent. That is a
3 determination the Jury should be making.

4 THE COURT: What does the case law say? I'm
5 sure that issue has come up.

6 MR. WEBBER: Yes, Smith versus Martin, Fourth
7 DCA, the Appellate Court reversed because the
8 expert testified that, "The conduct of the
9 Defendant amounted to gross negligence. This
10 caused the Jury to forgo independent analysis of
11 the fact and was particularly likely to influence
12 the Jury's decision."

13 THE COURT: So the expert can't give an
14 opinion as to the ultimate issue?

15 MR. WEBBER: He can't say "negligence," that
16 is the ultimate issue the Jury has to determine.
17 That is a factual determination. He can say he
18 fell below the standard of care. She can argue
19 falling below the standard of care is negligence,
20 but it will negatively influence the Jury.

21 MS. KREIZINGER: Your Honor, what Opposing
22 Counsel wants us to do is nobody can use the word
23 "negligence." "Negligence" is defined, and it is a
24 jury instruction that if a physician fell below the
25 standard of care. People use "negligence" as a



1 simple understanding of "it is below the standard
2 of care." He wants to stop us from using a
3 specific word, and all of the experts have
4 mentioned the word "negligence." They will say,
5 "Dr. Lopez was negligent when he did A, B and C.
6 He fell below the standard of care." I think it
7 puts a limit on using the word "negligence" is
8 highly prejudicial. I don't think there's any case
9 law on it. The case Opposing Counsel is talking
10 about is if you put someone on the stand, and they
11 are a lay witness, and you say to them, "Is Dr.
12 Lopez negligent?" And they are not an expert, they
13 absolutely can't testify to that ultimate fact.
14 But under the Rules of evidence, experts are
15 allowed to testify to that ultimate fact.

16 THE COURT: That is my general understanding,
17 talking about experts, that they can testify to the
18 ultimate fact.

19 MS. KREIZINGER: Absolutely.

20 THE COURT: In the case you gave me, was that
21 a lay witness?

22 MR. WEBBER: That was an expert, your Honor.

23 THE COURT: Let me take a look at it. What is
24 the date?

25 MR. WEBBER: That is a 1998 case. The term



1 "negligence," "negligent," appears on the Verdict
2 Form.

3 MS. KREIZINGER: Um-huh.

4 MR. WEBBER: The Jury has to make the
5 determination, they have to put everything
6 together. Just allowing an expert giving credence
7 by calling him an "expert," saying they are
8 negligent, you are short-circuiting the Jury's
9 responsibilities.

10 THE COURT: And the only case that addresses
11 this in the whole history of Florida juris prudence
12 is that one case?

13 MS. KREIZINGER: That is on gross negligence.
14 I can't bring in my expert, and ask him one
15 question, "Was Dr. Lopez negligent?" He has to
16 have his opinion as to the basis and he has to set
17 it. "This is the basis for it and that is
18 negligence." They want to prohibit any expert from
19 using the magic word "negligence" for some reason,
20 and it is a word we have to say in front of the
21 Jury. They have to understand what the word means,
22 it is in the jury instructions, and they have to
23 answer the question on the verdict form that says,
24 "Did Dr. So-and-so fall below the accepted standard
25 of care?" Because that is negligence.



1 MR. WEBBER: "Negligence" has a specific legal
2 meaning. The experts in medical evidence, by
3 testifying to something being negligent, they are
4 making a legal conclusion that they are not
5 qualified to make as a medical expert.

6 THE COURT: I think you all need to go back
7 and do your homework. There are cases there, I
8 know, besides the one case. I know this issue has
9 come up before. I looked at it, also.

10 My general feeling is, if you had not shown me
11 that case, they are perfectly able to do, the
12 expert is permitted, I think that is the law, I may
13 be wrong. I'll do my homework. You do yours. If
14 you can find me something else, I will be happy to
15 take a look at it.

16 Right now, my ruling, if I had to make it, I
17 would allow the testimony.

18 MS. KREIZINGER: Okay.

19 MR. WEBBER: Then the last -- Loreen, I don't
20 know if you made the decision of the attendance of
21 the minor at trial?

22 MS. KREIZINGER: Tell me your motion. I'll
23 explain my argument.

24 MR. WEBBER: We would like to have the minor
25 child, he's turning four in a couple of weeks, at



1 least appear at trial for some period of time, so
2 the Jury can see him, make their own evaluation,
3 they will hear testimony from the experts,
4 testimony from the treaters about his condition. I
5 believe they will be aided in their evaluation.

6 THE COURT: The Plaintiff?

7 MS. KREIZINGER: The minor child?

8 MR. WEBBER: Yes. We are not calling him up
9 to testify. We don't expect him to sit for the
10 whole trial, but we believe his appearance is
11 appropriate at some point in trial.

12 THE COURT: How does this work? "Hey, Members
13 of the Jury, sitting over here is the minor child."

14 How is the Jury going to know that this person
15 is the person who was the minor child in question
16 here? You are not calling him to testify, so are
17 you going to have him stand up?

18 MR. COMRAS: Judge, can I also add into that?

19 I join into the motion here. Whether we call him
20 up or not, perhaps we do that. We understand he's
21 four years old. He can't take an oath and swear to
22 tell the truth, nothing but the whole truth, but I
23 think when you are talking about a child and you
24 have people testifying that the child can't move
25 his arm, that the child can't lift his arm up, that



1 the child can't lift his arm to the side, and you
2 have that child, and he can do all of those things.

3 THE COURT: Are you going to call this child
4 up and have him do handstands.

5 MR. COMRAS: Nothing like that, obviously, we
6 want to have the child present, so the Jury can,
7 one, evaluate and see the child.

8 THE COURT: Lift his arm, though?

9 MR. COMRAS: I don't think we have to ask him,
10 he's a four-year old child, he is going to be doing
11 all of those things anyway.

12 THE COURT: How is that appropriate? The Jury
13 just sees him sitting there? They can't tell by
14 him sitting there, whether he can lift his arms or
15 do any of the things testified that he can or can't
16 do, unless you have him come in the well of the
17 Court and do those things. How is it going to be
18 probative?

19 MS. KREIZINGER: It is not going to be
20 probative.

21 THE COURT: Let him answer.

22 MR. COMRAS: I think if we have the
23 opportunity as to whether or not he can raise his
24 arm.

25 THE COURT: Do you want to call him to



1 testify?

2 MR. COMRAS: Not to testify, but demonstrate
3 what he can do, yes, Judge.

4 THE COURT: If you ask him to lift his arm,
5 that is testifying.

6 MR. COMRAS: I would ask him, can you please
7 lift your arm up for us?

8 THE COURT: I guess, I'm thinking in my mind
9 all of the bad things that can happen for both
10 sides. As soon as he lifts his arm and says, "Oh
11 my God." I don't know.

12 MR. COMRAS: We want the option, if it is
13 available. I think it is important for the Jury to
14 see how the child is doing, rather than to hear one
15 side say he's completely totally disabled and the
16 other side say he's not totally disabled, he can do
17 all of the things a normal kid can do.

18 THE COURT: The other question I have is: Is
19 he under subpoena?

20 MR. COMRAS: I think we can get that
21 accomplished.

22 THE COURT: He is not now. Is he on the
23 Witness list?

24 MR. COMRAS: I believe so.

25 MS. KREIZINGER: If I may respond? This child



1 has been through an enormous amount. He's been
2 through numerous surgeries. They had an
3 opportunity to examine him, they are going to bring
4 a doctor in. Our surgeon is coming in, our physical
5 therapist is coming in, they will be going through
6 his limitations. The parents are absolutely
7 against bringing the child into the courtroom.
8 They don't want anymore fear in this child. They
9 are very concerned. The child is now biting his
10 arm, his bad arm. That is how he deals with it.
11 We will bring in photographs, video, they can see
12 him. They already have an expert, we have an
13 expert, to bring the child in like a circus, the
14 parents are very adamant.

15 THE COURT: Assuming he was under subpoena and
16 he is on the Witness list, what is the legal reason
17 for not allowing him to appear or to be called?

18 MS. KREIZINGER: First of all, your Honor,
19 he's three years old. I don't think you can
20 subpoena three-year-old to come to trial.

21 THE COURT: I don't think it is a specific age
22 cap. Age is a factor and there are a number of
23 other factors would be considered if a witness of
24 this age should be called to testify. There is not
25 a per se rule that a four-year old can't testify.



1 MS. KREIZINGER: Yes, that is why we are going
2 to use photographs, video. They have an expert
3 that examined him. We have a surgeon that examined
4 him. We have a physical therapist. The child is in
5 therapy for every week and has been for the last
6 three years. I can't control what is going to
7 happen in the courtroom with this child. I don't
8 know his tolerance. I know his parents are very
9 adamant, they don't want him here. I think they
10 have every right to say they don't want to parade
11 this child into the courtroom. They are his legal
12 guardian, he is a minor. They have great concern.
13 I understand that. If something goes wrong, and
14 causes another issue to come up, I don't want that
15 to go against my case. I don't want the prejudice
16 that could happen.

17 THE WITNESS: I don't think it is prejudice,
18 it may be on the other side for calling a four-year
19 old child.

20 MR. WEBBER: Your Honor, the motion is
21 obviously the alternative to subpoenaing him and
22 having him come when we want him as opposed to any
23 other circumstances. But if the Court wants us to
24 subpoena him and then make the determination, we
25 can do that, as well.



1 THE COURT: I think it is a moot point until
2 he is under subpoena. Once he's under subpoena and
3 you still want to parade him in front of this Jury,
4 I'll make the determination at that point.

5 MR. COMRAS: The only thing I want to bring up
6 to that is we asked if there were videos of the
7 child that they would be using at the time of
8 trial. As of last week, they indicated none. Now,
9 I'm hearing they have video. My concern is, I had
10 an IME doctor, he was unable to take pictures or
11 videos. Ms. Kreizinger would not allow either.
12 I'm prejudiced in that sense, if they are going to
13 allow video to come in at this point.

14 THE COURT: Are you going to use video?

15 MS. KREIZINGER: Yes, your Honor. We have an
16 exchange of exhibits to show whatever we are going
17 to use next Wednesday. All Counsel agreed at 2
18 o'clock, that whatever they have in terms of
19 exhibits going to be exchanged and shown.

20 MR. COMRAS: As of last week, the problem is,
21 we asked if there were any videos, asking for
22 copies of all of the records.

23 THE COURT: As far as the videos, can you let
24 them know today?

25 MS. KREIZINGER: Yes, I will, Judge.



1 MR. WEBBER: Can we also get copies of the
2 videos?

3 MS. KREIZINGER: Sure.

4 THE COURT: I didn't rule on whether or not if
5 this witness is subpoenaed, if the Witness will be
6 called to testify or make an appearance
7 demonstration, I don't know yet. We will cross
8 that bridge if and when.

9 MS. KREIZINGER: Plaintiff has a couple of
10 motions for the Court to consider.

11 THE COURT: It is past the hour.

12 MS. KREIZINGER: Okay, your Honor. Probably
13 the most significant issue at this point is is we
14 did file a motion to strike.

15 THE COURT: The economics expert?

16 MS. KREIZINGER: The economics expert that was
17 just listed ten days ago. I don't have an
18 economist. The Rules are clear in terms if they
19 get an expert, I get an expert, but now, we are on
20 the eve of trial. This is one of those Binger
21 situations, where I'm in an ambush situation. They
22 apparently want to use an economist to talk about
23 present value, which we no longer use "present
24 value" on the verdict form or in the Jury
25 instructions. So now, if the Court allows them, I



1 have to get an economist so we have balance here.

2 I think it is total ambush. We paid experts to
3 come to trial on the 27th an enormous amount of
4 money we up-fronted. We have a number of them
5 coming out. I don't want a continuance in this
6 case. I want to try the case on the 27th. I think
7 for them to come in at the last minute, you know,
8 this is the third time to be ready for trial. We
9 have been rolled two other times. Experts were
10 supposed to be disclosed 90 days before trial,
11 which was three months ago, and on the eve of
12 trial, they pulled this. I have a huge problem. I
13 think it is prejudicial if it is allowed. I think
14 their expert should be stricken.

15 THE COURT: It is a tall hill to climb on this
16 one. Go ahead.

17 MR. COMRAS: We disclosed Dr. Durham 25 days
18 before trial, we disclosed him on October 2nd.
19 What I can tell you, your Honor, this is what we
20 consider to be one of the shortest depositions that
21 would take place in this case altogether. The only
22 purpose for the economist is to come in and testify
23 about the present value of their life care plan.
24 They have a life care plan, they can discuss the
25 present value of their life care plan. I think we



1 are entitled to do so. I think the Jury
2 instructions indicate any award in a life care plan
3 has to be --

4 THE COURT: -- this life care plan was not
5 sprung on you yesterday? Why wasn't the Witness
6 timely disclosed? Obviously at some point in time,
7 you realized, "Gee, we are going to need an
8 economist here and ask the Jury to reduce this to
9 present value, why wait until we are well past the
10 disclosure deadline?

11 MR. COMRAS: Judge, the last order that I saw
12 didn't provide disclosure deadlines. We were going
13 to meet and discuss when our experts and exhibits
14 would be re-disclosed. I have seen a flurry of new
15 amended witness lists and new exhibit lists and so
16 on.

17 THE COURT: The fact is they don't have an
18 economist. Am I to continue the trial again to
19 allow them to get an economist?

20 MR. COMRAS: I don't think an economist would
21 be difficult to get between now and trial.

22 MS. KREIZINGER: Your Honor, I am absolutely
23 in no position to find an economist, take their
24 economist, be prepared. We are going to New York
25 on Tuesday, because Mr. Gordon Lea's expert, his OB



1 expert can't testify at trial. We are going up to
2 New York on Tuesday, doing a video deposition for a
3 trial. I absolutely have no time to get an
4 economist. It is prejudicial. I don't want a
5 continuance. We are ready to go. It is going to
6 be highly prejudicial to the Plaintiff, because we
7 had to shell out all of the costs for the experts.
8 Now, on the eve of trial, he's trying to bring in a
9 new one. You said we had to go back to the prior
10 trial, the deadline says 90 days prior to trial,
11 experts have to be disclosed, and it wasn't
12 disclosed. They violated the trial order to stop
13 these kind of things from happening.

14 THE COURT: I agree. I'm going to grant the
15 Motion to Strike. The wait listing of this expert
16 is clearly prejudicial to the Plaintiffs' side,
17 requiring them to go out now and get a new expert
18 on the eve of trial is asking too much.

19 I'll grant the motion.

20 MS. KREIZINGER: Your Honor, the Plaintiffs'
21 next motion is the Defendants in pretrial listed
22 three experts for their standard of care nursing
23 experts. They have two OBs and they have a nurse.
24 We went in front of Judge Blanc in January, he made
25 it clear, they could have two experts for the



1 standard of care. The understanding was I would
2 pay for the first one, they would pay for the
3 second one. We took Dr. Chauhan's deposition out
4 in Texas, that was standard of care nursing. I
5 paid for that deposition. Then they took Dr.
6 Graham at John Hopkins, that is the second standard
7 of care nursing, and they also talked about the OB
8 standard of care. They paid for the second one.
9 Now, they want to go and do a deposition by video
10 next week of the third nurse expert who is a nurse.
11 They want to go to Rhode Island next week and add
12 this person in as their third standard of care
13 nursing expert at the last minute, and I think it
14 is absolutely prejudicial. I got notice yesterday
15 from them -- "Oh, by the way, we want to go to
16 Rhode Island and we want to take this third
17 standard of care nursing expert in Rhode Island."
18 We object to.

19 THE COURT: Is this situation similar to the
20 economist one? When was this witness disclosed?

21 MS. KREIZINGER: This witness was disclosed, I
22 have the transcript, Judge Blanc specifically said
23 you get two experts. I have the testimony from Dr.
24 Chauhan, which was out in Texas. I asked him
25 specifically, March 23, 2015: "Are you rendering



1 any standard opinions as to relates to Dr. Brown?"

2 "No. No one has asked me." "Your opinions are only
3 as it relates to the nurses?" "That is what I was
4 asked to do."

5 He's standard of care for nurses. Then we do
6 the deposition of Dr. Grand. This is on March 24,
7 2015. Mr. Sawran asked at the end of the
8 deposition to make it short for the Court:

9 **Q. "Dr. Graham, is it your opinion that within a**
10 **reasonable degree of medical probability and based on**
11 **your education, background, training, experience as an**
12 **obstetrician, that the care and treatment rendered by**
13 **the nursing staff and Dr. Brown and the others involved**
14 **in the care of this patient met what you would consider**
15 **to be an appropriate standard of care in obstetrics?"**

16 A. "Yes. I mean, I think the standard of care
17 was met by the nurses and the doctors."

18 That is their second nursing standard of care
19 expert. They had two. I paid for one, they paid for
20 the other. Now, they are trying to come in the backdoor
21 and use a third one, which I object to. It is a
22 complete violation of what Judge Blanc said when we had
23 the initial hearing on this.

24 MR. WEBBER: First of all, I totally disagree
25 with what Plaintiffs' Counsel represented Judge



1 Blanc said. In fact, what Judge Blanc said is, "So
2 I don't give you a bad ruling, because I'm
3 confused, I will put you on call for a 15- or 30-
4 minute hearing. Remind me of that." Counsel never
5 called up a motion. After this hearing, she set
6 our nurse expert for a deposition, which she then
7 cancelled the day before. After she had made this,
8 these arguments, and then still gone forward and
9 set forth our expert witness's deposition.

10 THE COURT: How many standard of care experts
11 on nursing do you intend to call?

12 MR. WEBBER: Your Honor, we intend to call
13 Nurse Sosa as a standard of care on the nursing
14 issue. After this, she also got her own nurse to
15 testify.

16 THE COURT: Are you going to call two
17 witnesses on this? Three witnesses?

18 MR. WEBBER: We don't intend to have any
19 cumulative expert testimony. We have noticed three
20 experts; one nursing, two OBs. We are also
21 responsible under Plaintiffs' theory for the
22 vicarious liability of Dr. Brown. So one of the
23 OBs will be testifying regarding that. The other
24 OB will be testifying regarding causation of the
25 injury, proper use of Pitocin, policies and



1 procedures, the need for estimated fetal weight.
2 There will be no cumulative testimony. Plaintiffs'
3 counsel had months, maybe years, or a year at this
4 point, to take Nurse Sosa's deposition, which she
5 knew, because she set the deposition. After she
6 cancelled it, she never talked about it again,
7 never asked for her to be presented.

8 THE COURT: What is on record as far as what
9 Judge Blanc said? Is there anything more?

10 MR. WEBBER: No.

11 THE COURT: I thought I saw someone, maybe it
12 was a different case.

13 MS. KREIZINGER: You saw my original motion to
14 strike expert heard in January. Your Honor, the
15 Judge said if you couldn't work it out between the
16 parties, come back in front of us on calendar call.
17 I took Dr. Chauhan's and Dr. Graham's standard of
18 care nursing. I said to Mr. Sawran, who is lead
19 Counsel in this case, "I'm not taking your nurse.
20 You got two. You just used your two up. I'm not
21 going to take the nurse." We had no idea that this
22 nurse was even in question until I get a phone
23 call, "Oh, by the way, we are going to take this
24 nurse's deposition."

25 I asked them: "Are you planning on having



1 three standard of care?" The rule in Florida is
2 you get one standard of care expert. Now, he just
3 explained to you, he's bringing in three people;
4 two OBs and now this nurse. I already got the
5 standard of care on nursing from these two. They
6 absolutely shouldn't be allowed to do the third.
7 We are on the eve of trial. They are saying, "it
8 is not cumulative." Well, guess what? I got one
9 nurse and one OB, they got three. They two OBs on
10 standard of care nursing and they want to add a
11 nurse on standard of care nursing. Enough is
12 enough. It is the eve of trial, they got two. I
13 paid for one and they paid for one.

14 MR. WEBBER: To say it is the eve of trial, we
15 never withdrew Nurse Sosa. She was on the Witness
16 list numerous times.

17 THE COURT: Why wait until now to depose her?

18 MR. WEBBER: It is not our responsibility to
19 depose her on expert, your Honor. We asked if they
20 were available on Friday, we had scheduling issues,
21 we resolved it so she'll be able to come live at
22 trial, because at the time we asked her, she was
23 not able to come live. We were going to try to
24 take her testimony videotape for the use of trial
25 on that Friday.



1 THE COURT: Like the other motion that has
2 come before me, it seems a lot is happening at the
3 time that you should be getting ready for trial.
4 Now everybody is running on the fly, taking
5 depositions, that is why we have deadlines in these
6 cases. My feeling is, you know, you should be held
7 to the two. You can pick whatever two you want.
8 If you want to pick this person's deposition, on
9 your dime, then, and use that person and not one of
10 the others, I will give you that opportunity, but
11 you should be limited to two.

12 MS. KREIZINGER: Then, your Honor, if they are
13 going to use her, I will need a quick discovery
14 deposition before they call her at trial, but they
15 will have to pay for that one. I understand you
16 will limit it to two standard of care nursing
17 experts, as opposed to the three they have listed.

18 THE COURT: Right, they can choose which two
19 of the three.

20 MR. WEBBER: Okay.

21 MS. KREIZINGER: Okay.

22 THE COURT: Anything else?

23 MR. WEBBER: I do have a quick scheduling
24 question. Because as we have been, we have been
25 discussing this case amongst the Counsel.



1 THE COURT: Discussing settlement?

2 MR. WEBBER: That has not come up so much.

3 Sorry.

4 The question has been raised, especially on
5 the Defense side, what would happen if we get to
6 the eighth day and not finished with trial, because
7 we are --

8 THE COURT: I'm not going to mis-try after
9 eight days of trial.

10 I'm not that mean.

11 MR. WEBBER: What is your schedule? You would
12 not be unique if you decided to do that.

13 THE COURT: Unless there's some extraordinary
14 circumstances. I think everybody should give their
15 best estimate of how long. It might take ten days,
16 but...

17 MR. WEBBER: I think from the Defense side, we
18 think it is more likely to take ten days, than the
19 eight set aside. That would, if we still started
20 on Tuesday --

21 THE COURT: It may cause disruption in terms
22 of, I don't know if we have holidays and stuff,
23 bringing the Jury back after a couple of days,
24 three days, I don't know, I'm not looking. If we
25 go eight days, I'm not going to mis-try the case.



1 MS. KREIZINGER: Your Honor, just as a side
2 note on Friday November 6th, I ask if we could
3 adjourn early if we are still in trial. I'm taking
4 my daughter on a two-day cruise for her birthday.
5 I have to be on a boat. I want to let everybody
6 know, that Friday, I have to be in port in Fort
7 Lauderdale.

8 THE COURT: Remind me, we can work with that.

9 MS. KREIZINGER: I think the other Motions In
10 Limine are standard, the remaining ones we have?

11 MR. COMRAS: So I'm clear.

12 THE COURT: Sure.

13 MR. COMRAS: If we go eight days, it ends on
14 Friday, if we leave early on Friday, would we
15 reconvene the following week?

16 THE COURT: Yes, that would be my hope,
17 without looking at the calendar.

18 MR. WEBBER: I think there's a holiday in the
19 middle of that week.

20 THE COURT: Yes, I know I have some special
21 sets.

22 MR. COMRAS: I don't know if we need more
23 jurors because of that, Judge, but I wanted to
24 throw that out.

25 THE COURT: I think I'm bring in?



1 MS. KREIZINGER: 60.

2 THE COURT: I think I already asked for 70. We
3 can comfortably get, not comfortably, but we can
4 get 70 in here. Hopefully, we can get a jury. How
5 many strikes would that be total?

6 MS. KREIZINGER: 12 each, so we are at 48.

7 THE COURT: Well, if you use all of your
8 strikes, obviously, we are not going to get a panel
9 out of that. You have four defendants?

10 MR. COMRAS: Three.

11 THE COURT: 9 and 9 is 18.

12 MS. KREIZINGER: Okay.

13 THE COURT: Nine and you get nine.

14 MS. KREIZINGER: I guess on behalf of the
15 Hospital, okay. Okay.

16 THE COURT: Hopefully, we won't need all 18.
17 Okay, anything else before we all go to lunch?

18 MS. KREIZINGER: No.

19 THE COURT: Sounds like a an interesting case,
20 so I'm actually looking forward to trying it,
21 although I will not be too upset if you settle it.
22 You have my permission to keep on talking. Any
23 questions of me? Trial procedures?

24 MS. KREIZINGER: When do you normally start
25 and stop and lunch?



1 THE COURT: That is a good question. My hope
2 would be most of the days, again, Monday, I usually
3 have special sets, so we will not be convening on
4 Mondays. My hope is start promptly at 9:30. I
5 will be done my by then, 20-minute break in the
6 morning and one in the afternoon. I try to keep
7 lunch to an hour, hour and fifteen minutes.
8 Sometimes I have to take longer, there are things
9 that I have to do, too. I will try to keep it.
10 Try not to go past 5:00, unless there's a witness
11 on the stand. Obviously, we can finish up, I will
12 go past 5:00, if it is going to be much later, it
13 will be a special circumstance, we are under
14 restrictions not to go past five because of
15 overtime, and other problems the clerks have. I'll
16 do my best to finish at 5:00.

17 MS. KREIZINGER: Are all Mondays out, then?

18 THE COURT: I believe they are.

19 MS. KREIZINGER: Okay.

20 THE COURT: I will take a look.

21 MS. KREIZINGER: We have an expert paid for on
22 the first Monday after trial.

23 THE COURT: You can call Ms. Brant, and
24 inquire of my calendar. She can tell you that
25 information.



1 MR. COMRAS: All Mondays are off?

2 THE COURT: I believe so. Any other
3 questions?

4 MR. WEBBER: When does your Honor want jury
5 instruction as soon as?

6 THE COURT: Good question. I would like the
7 Jury instructions, typically, at the beginning of
8 the trial. I like to review them, the theories of
9 the case, the way things are going. If possible,
10 then, three packets, agreed upon and then your
11 special requests, and a copy of the proposed
12 verdict form.

13 MS. KREIZINGER: Okay.

14 THE COURT: Anything else?

15 MS. KREIZINGER: That's it.

16 THE COURT: Very interesting. Good argument,
17 everybody. We will be adjourned. Have a great
18 lunch.

19 (HEARING CONCLUDED: 11:52 A.M.)
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25



1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF BROWARD

4
5 I, MELISSA KALLAS, Court Reporter and Notary
6 Public for the State of Florida, do hereby certify that
7 I was authorized to and did stenographically report the
8 foregoing hearing; the foregoing hearing was taken
9 before me; and that the transcript is a true and
10 correct record of my stenographic notes.

11 I further certify that I am not a relative,
12 employee, attorney or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action. Dated this 21st
16 day of October, 2015.

17
18
19
20 *Melissa Kallas*



21 _____
22 MELISSA KALLAS, COURT REPORTER
23 NOTARY PUBLIC, STATE OF FLORIDA
24
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